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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,385	08/24/2001	Scott Levine		3458

7590 07/15/2003
Scott Levine MD
7350 Sandlake Commons Blvd., Ste 2215
Orlando, FL 32819

EXAMINER

MCINTOSH III, TRAVISS C

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 07/15/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/939,385

Applicant(s)

LEVINE, SCOTT

Examiner

Traviss C McIntosh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 24-64 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

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DETAILED ACTION

The Amendment filed April 21, 2003 has been received, entered into the record, and carefully considered. The following information provided in the amendment affects the instant application by:

Claims 1-23 have been canceled.

New claims 24-64 have been entered.

The title has been changed.

The specification has been amended to correct the improper use of trademarks.

Receipt is acknowledged of the 132 Declaration.

An action on the merits of claims 24-64 is contained herein below. The text of those sections of Title 35, US Code which are not included in this action can be found in a prior Office action.

The restriction requirement set forth below is a result of the new claim set presented by applicant which is drawn to six (6) independent groups and was necessitated by applicants amendment.

It is noted, that the amendment filed April 21, 20003 has not yet been reviewed for patentability determinations or new matter rejections and the examiner will determine patentability and ensure no new matter has been entered upon an election of an invention by the applicant. Applicant should ensure no new matter has been entered into the file and that claims elected meet all 112 1st and 2nd requirements.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 24-36 and 64, drawn to a nutritional supplement, classified in class 514, subclass 54+.
- II. Claims 37-41, drawn to a method of improving the health of a mammal, classified in class 514, subclass 54+.
- III. Claims 42-47, drawn to a method of administering a nutritional supplement, classified in class 514, subclass 54+.
- IV. Claims 48-52, drawn to a method of inducing weight loss, classified in class 514, subclass 54+.
- V. Claims 53-57, drawn to a method of reducing the risk of developing and aiding in the treatment of cardiovascular disease, classified in class 514, subclass 54+.
- VI. Claims 58-62, drawn to a method of assisting in limiting ingested toxins, classified in class 514, subclass 54+.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the nutritional supplement of group I can be used in the methods of groups III-VI.

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Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the nutritional supplement of group I can be used in the methods of groups II and IV-VI.

Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the nutritional supplement of group I can be used in the methods of groups II, III, V, or VI.

Inventions I and V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the nutritional supplement of group I can be used in the method of groups II-IV, and VI.

Inventions I and VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP

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§ 806.05(h)). In the instant case the nutritional supplement of group I can be used in the methods of groups I-V.

Inventions II- VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different etiological modes of activity and are independent of one another in the scope of the conditions.

Because these inventions are independent and distinct for the reasons given above and the search required for one Group is not required for the other Groups, restriction for examination purposes as indicated is proper, as this would indeed impose an undue burden upon the examiner in charge of the instant application.

To search more than one inventive concept of the independent and distinct methods of groups II-VI would indeed impose an undue burden upon the examiner in charge of the instant application.

It is noted that if applicant elects the composition of group I, applicant is entitled to elect one (1) method for examination in the instant application, 09/939,385. One composition and one method will be examined in the instant application.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

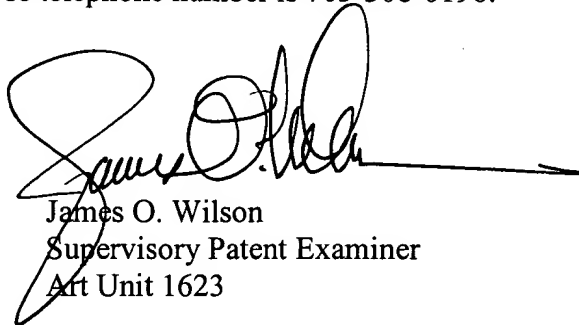
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traviss C McIntosh whose telephone number is 703-308-9479.

The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 703-308-4624. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



James O. Wilson
Supervisory Patent Examiner
Art Unit 1623

Traviss C. McIntosh III
July 14, 2003